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A
S Y L L A B U S
OF A
COURSE OF LECTURES,
INTENDED TO BE DELIVERED,
In pursuance of an Order of the Honourable
Society of LINCOLN'S INN,
IN THEIR HALL.

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K

Potius ignoratio juris litigiosa est quam scientia.

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P R E F A C E.

THE Delivery of a Course of Lectures upon the Laws of England, in the Place where they are studied and practised, is not altogether new to the Profession. A similar Plan was undertaken in *Gray's Inn*, by Mr. DANBY PICKERING in 1758, in consequence of an Order from the Heads of that Society. The Lectures were continued until he became a Benchler, but with what Success cannot now be ascertained.

The Propriety of reviving a Design of this Nature has been submitted to the Opinion of Persons the most eminent in the Profession, and is now pursued under the Sanction of their Approbation.

In perusing the following Syllabus, it may be observed, that great Use has been made of

Sir

Sir MATTHEW HALE's "Analyſis of the "Law," and of the Commentaries of Sir WILLIAM BLACKSTONE. In an Undertaking of this Kind, the Author was naturally anxious to avail himſelf of the Labours of theſe great Men ; and where he has ventured to differ from their Arrangements, it has been with Reluctance. The admirable Performance of Sir MATTHEW HALE, however, did not ſeem fully adequate to the Purpoſe of explaining the civil Part of our municipal Inſtitutions, as they now exiſt. It was written at a Time when the Laws affecting landed Eſtates had recently undergone important Alterations, by the Abolition of Military Tenures, and when thoſe which concerned Perſonal Property formed but an inconfiderable Portion of our Code. The Law of Settlements, under the Proviſions of the Statutes of Charles the Second, were then of recent Introduction, and the Determinations upon the Subject of Courſe few. Neither was it until ſome Time after the Death of this venerable Judge, that the Increate of Trade and Manufacture gave riſe to thoſe numberleſs Queſtions, concerning Perſonal Property, which have ſince occupied the Attention of our Courts of Juſtice. The Laws of Inſurance, of inland
Bills

P R E F A C E.

Bills of Exchange, and of every other Branch of Jurisprudence affecting commercial Relations, may almost date their Origin from the Revolution, and the Æra of their present Perfection is to be placed at a Period much more recent. * As Subjects thus various and complicated have arisen since the *Analysis* was written, it is no Matter of Surprise that even the provident Mind of this great Man has not marked out a suitable Place for all of them in his Arrangement.

Besides, it must be observed, that the Work is an *Analysis* of the Common Law only. That the Rules and Principles of Equity are left wholly untouched, and without them every analytical Distribution of our Laws must be obviously imperfect.

The Method pursued by Sir WILLIAM BLACKSTONE in his Commentaries is nearly the same in its great Outlines with that of Sir MATTHEW HALE, although the Period at which they were composed was not subject to the same Disadvantages. He has, however, in many Places improved on the Plan of his Predecessor. These Improvements have been anxiously retained in the present Arrangement.

arrangement. But it must be confessed, that they are neither sufficiently numerous nor important to meet the Observations which have been made. The Chapters upon *Relative Rights*, *Personal Property*, and the *Remedies in Equity*, are by no Means so extensive as these Subjects require.

Whatever Force these Reasons may have in justifying some Deviation from the Plans of Sir MATTHEW HALE and Sir WILLIAM BLACKSTONE, the Author fears that they may furnish but an imperfect Apology for the Method which he has himself pursued. He trusts however, that the candid Reader will recollect the Design with which the Syllabus was composed: That he means it to direct the Consideration of the Gentlemen who attend him, to such Subjects as will qualify them to comprehend his Lectures with more Ease, and to retain them with more Accuracy: That in the Arrangement of a Course of Lectures upon an abstruse Science, something else is to be attended to besides the Beauty of System, and the Distribution of the Parts according to their most natural Connection. As the Design is to unfold the Science to those who are unacquainted with

with its Rudiments, those Parts must be first explained, which require no previous Knowledge of the Subject. This was the Opinion of Sir MATTHEW HALE, the Spirit of whose Advice the Author has endeavoured to follow, although he has in some Degree departed from the specific Plan which he had prescribed*.

There is one Part of the Plan of these Lectures of which it is thought right to apprize the Reader, as he cannot collect it from a Perusal of the Syllabus—the Attempt to facilitate the Knowledge of the Practice of the Courts of Common Law. At present, the Student who has not been in an Attorney's Office sees nothing of the Proceedings in an Action except Draughts of the Pleadings; and he finds it difficult to comprehend what is thus carried on in a Manner invisible to him. Every one must be

* His Words are, “ Having done with the *Rights of Persons*, “ I now come to the *Rights of Things*. And though according “ to the usual Methods of Civilians, and our ancient Common “ Law Tractates, this comes in the second Place, after the “ *Jura Personarum*, and therefore I have herein pursued the “ same Course; yet that must not be the Method of a young “ Student of the Common Law, but he must begin his Study “ here at the *Jura Rerum*; for the former Part contains Matter “ proper for the Study of one that is well acquainted with those “ *Jura Rerum*.”

Analysis of the Law, Chap. xxiii. p. 61.

aware

aware how much the Memory is assisted in the Recollection of technical Distinctions by the Exhibition of the very Process out of which these Distinctions arise. For this Purpose, it is the Intention of the Author, when treating of the general Form in which Remedies at Common Law are pursued, to produce Fac Simile's of all the usual Proceedings in a personal Action. By this Means the Gentlemen who attend his Lectures may view the whole Progress of a Suit as it is actually carried on through the Hands of the respective Attornies, and through the several Offices, from the Commencement to the Conclusion.

NO. 17, MITRE COURT BUILDINGS,
April 27, 1796.

A S Y L-

A

SYLLABUS

OF A

COURSE OF LECTURES, &c.

OF LAW IN GENERAL, AND THE SEVERAL
KINDS TO WHICH MAN IS SUBJECTED.

LAW, applied to human Action, may be defined a general Rule of Conduct, prescribed by a superior Power, and enforced by Means of Reward or Punishment.

Laws, with respect to the Powers prescribing them, are, 1. DIVINE, which is either Natural or Revealed; 2. HUMAN or MUNICIPAL, which is the Law of a particular Nation; 3. PARTLY DIVINE and PARTLY HUMAN, which is the Law of Nations.

B

OF

OF THE LAW OF ENGLAND, AND ITS GENERAL DIVISION.

The Law of England is to be considered,

I. *With respect to the Foundations of its obligatory Force.*

II. *With respect to the Objects upon which it is intended to operate.*

I.

With respect to the Foundation of its obligatory Force, it is, 1. LEX SCRIPTA, which is founded on positive Statute; 2. LEX NON SCRIPTA, which is founded on immemorial Usage.

LEX SCRIPTA or STATUTES are either, 1. *Public.* 2. *Private*; and herein, of the FORM of passing them, both ancient and modern; of the RULES for construing them; of the MODES of repealing them.

The UNWRITTEN LAW may be divided into,

1. *The Common Law*, strictly so called, which is practised in the Common Law Courts; and consists, 1. Of General Customs, or such as affect the Rights of all the Subjects of the Realm. 2. Particular Customs, or such as are in Force only in some particular District.

2. *Par-*

2. *Particular Laws* which are followed only in *particular Courts*, such as the Courts Ecclesiastical and Maritime.

3. *Rules and Maxims* which are observed in Courts of Equity.

II.

The Objects of the Law of England are,
1. RIGHTS OF INTERESTS. 2. WRONGS OR INJURIES which may be done to those Rights; incident to which is, 3. The RELIEF or the Remedies applicable to those Wrongs.

B O O K I.

OF RIGHTS.

R I G H T S are either, 1. POLITICAL; 2. CIVIL.

POLITICAL* RIGHTS are such as relate to the Constitution of the supreme Power in the State.

CIVIL RIGHTS are such as are derived under that supreme Power, when constituted.

* This is only mentioned for the Sake of regular Distribution. The Subject is foreign to the Scope of these Lectures, and will not be considered.

CIVIL RIGHTS concern either,

I. *Man's Person considered individually.*

II. *His Property,*

III. *Some Relation in which he stands with respect to other Individuals.*

PART I.

Of the RIGHTS which concern Man's PERSON considered individually.

THESE are,

1. Such as relate to the Safety of his Person.
2. The Freedom of his Person.
3. To his Reputation.
4. To his Maintenance, or, as it is called, his Right of Settlement in a particular Parish.

PART II.

Of the RIGHTS which concern PROPERTY.

PROPERTY is either *Public*, whereof the Use is common to all the Members of the Community; or *Private*, whereof the Use is exclusively to one or more.

Public

Public Property are, 1. Common Highways.
2. Common Bridges. 3. Rivers. 4. Ports
5. Public Markets.

In treating of the Right of *private Property* are to be considered,

I. The Nature of the Things over which it is to be exercised.

II. The Quantity of Interest or Estate which is had in these Things.

III. The Means by which this Quantity of Interest is acquired or lost.

IV. The Time at which this Interest or Right of Enjoyment commences.

V. The Number and Connections of those who have the Interest.

VI. What Persons are under an Incapacity to take or enjoy an Interest.

SECT. I.

Of the Nature of the Things over which the RIGHT of PROPERTY is to be exercised.

THINGS are, 1. CHATTELS. 2. HEREDITA-
MENTS. These Terms not properly synoni-
mous with Moveable and Immoveable.

CHATTELS are, 1. *Chattels personal.* 2. *Chat-
tels real.*

HEREDITAMENTS, are, 1. *Corporeal*; 2. *Incorporeal*.

1.

Corporeal are Lands or Tenements.

2.

Incorporeal are, 1. Rents and Services. 2. Commons. 3. Ways and Easements. 4. Rights of Fishery. 5. Advowsons. 6. Tithes. 7. Dignities. 8. Offices. 9. Franchises and Liberties. 10. Corodies or Pensions. 11. Annuities. 12. Founderships.

SECT. II.

Of the Quantity of Interest, or the Estate which is had in THINGS.

1. **I**N Chattels personal. 2. In Hereditaments and Chattels real.

Of the Quantity of Interest in Chattels personal.

This is either, 1. *Absolute*. 2. *Special or qualified*.

Special or qualified Property may be either

1. From the Nature of the Thing which renders it incapable of permanent Ownership; or 2. From the particular Agreement of the Parties.

Of

*Of the Quantity of Interest in Hereditaments
and Chattels real.*

Herein are to be considered,

1. The TENURE, or Terms upon which it is to be holden.
2. The TIME for which it is to be enjoyed, and consequent Extent of Dominion over it.
3. Of the DISTINCTION between LEGAL and EQUITABLE ESTATES.

C H A P. I.

OF TENURES.

THE TERMS upon which real Property is holden, are called TENURES; and herein,
1. Of their Origin and Nature. 2. Of Lordships, Honours, Manors. 3. Of Lords Paramount and Mesne, of Tenants in Capite and Paravaile.

TENURES are, CIVIL and SPIRITUAL.

CIVIL TENURES are to be considered, 1. As they subsisted *anciently*; 2. As they subsist *now*.

Tenures as they subsisted anciently were, 1. Chivalry or Knights-Service. 2. Grand Serjeanty. 3. Free Socage. 4. Pure Villenage. 5. Privileged Villenage.

1. *Tenants by Knights-Service* were bound to attend the Lord to his Wars. The remaining Incidents to their Tenure were, 1. Homage

Fealty and Suit of Court. 2. Aid. 3. Relief.
4. Primer Seisin. 5. Wardship. 6. Marriage.
7. Fines upon Alienation. 8. Escheat.

2. *Grand Serjeanty* differs from a Tenure in Chivalry in the Nature of its Service, the Tenant being bound to do some special honorary Service to the King in Person. The other Incidents to this Service were the same as in Chivalry.

Knights-Service, and all the Incidents to *Grand Serjeanty*, except the honorary Services, were abolished by 12 Car. 2. c. 24.

3. *Frank Socage*, is a Tenure by Service free and certain.

The Incidents to this Tenure which still exist are, 1. Fealty Suit and Service. 2. Relief. 3. Escheat. 4. Heriots. 5. Wardship. 6. Fines upon Descent and Alienation.

Incidents abolished by 12 Car. 2. c. 24. were, 1. Aids. 2. Primer Seisin. 3. Marriage. 4. Fines for Alienation.

4. *Pure Villenage*; to which the Incidents are, 1. Services. 2. Relief. 3. Escheats. 4. Heriots. 5. Wardships. 6. Fines upon Descent and Alienation.

5. *Privileged Villenage* exists principally in such Lands as were possessed by the Crown at the Time of the Conquest. It is then called *Tenure in ancient Demesne*, and differs from the other

other Species of Villenage Tenure in the having certain Privileges annexed to it.

Tenures as they now subsist may be divided into,

1. FREEHOLDS, which exist by the Course of the Common Law; 2. COPYHOLD, which exist by force of particular Custom; and 3. LEASEHOLD, which arise out of the Special Agreements of the Parties.

1. FREEHOLD comprehends, 1. *Grand Serjeanty*. 2. *Petty Serjeanty*. 3. *Frank Socage*. 4. *Burgage Tenure*.

2. COPYHOLD comprehends, 1. *Copyholds of Frank Tenure*. 2. *Copyholds enjoyed at the Will of the Lord, according to the Custom of the Manor*.

The only SPIRITUAL TENURE now in Existence is FRANKALMOIGNE.

CHAP. II.

Of Estates with respect to the Time for which they are to be enjoyed, and the consequent Extent of Dominion over them.

ESTATES with respect to their Duration are either, ESTATES OF INHERITANCE, or ESTATES LESS THAN INHERITANCE.

ESTATES OF INHERITANCE are, I. IN FEE. II. IN TAIL.

I. ESTATES

I.

ESTATES IN FEE are, 1. ABSOLUTE OR FEE-SIMPLE. 2. LIMITED.

1. *A Fee simple* is an Estate to a Man and his Heirs general for ever.

2. *A limited Fee* is an Estate which may descend to Heirs general for ever, but which has also some Circumstance annexed to it, as a Condition upon the happening of which it is made determinable.

From the Nature of the Condition annexed, they have been divided into, 1. *Base* or *qualified*. 2. *Conditional Fees*.

THE EXTENT OF DOMINION WHICH THE TENANT HAS OVER HIS FEE, is the highest that the Law permits. He has the Power, 1. *To transmit it*, in Cases of Bodies Corporate, *to the Successor*. 2. *To the Heir*, in Case of Persons natural *by Descent*. 3. *To any other Person by Alienation*. 4. *To charge it, lease it, &c.*

II.

ESTATES IN FEE-TAIL are either, 1. *General*. 2. *Special*, which includes Frankmarriage; and they may be either, 1. *Male*, 2. *Female*.

THE EXTENT OF THE TENANT'S DOMINION OVER AN ESTATE-TAIL is more limited than that

that of Tenant in Fee. 1. In relation to *hereditary Transmission*, which is regulated according to the Line of Descent prescribed by the Donor. 2. In respect of *Alienation*; and herein of the Statute *De donis*.

ALIENATIONS by Tenant in Tail are, 1. Such as are void by his Death. 2. Such as are voidable only. 3. Such as bind the Issue in Tail, but not the Reversioner. 4. Such as bind both the Issue and Reversioner.

The other Incidents to this Estate are, 1. Right of committing Waste. 2. Of making Leases. 3. That the Wife or Husband of the Tenant shall respectively have Dower, or Tenancy by the Curtesy of England out of the Lands.

ESTATES LESS THAN THOSE OF INHERITANCE are either, 1. FREEHOLD; or 2. LESS THAN FREEHOLD. Herein of the Significations of the Word FREEHOLD.

I.

ESTATES OF FREEHOLD LESS THAN INHERITANCE are, 1. *Conventional*, which are created by Act of the Parties. 2. *Legal*, which are created by Operation of Law.

Conventional Estates are, 1. For the Life of the Tenant. 2. For the Life of another, or *pur autre Vie*.

2. *Legal Estates of Freehold* are, 1. Tenancy in Tail, after Possibility of Issue extinct. 2. Tenancy

nancy by the Curtesy of England. 3. Tenancy in Dower.

The Incidents to Estates of Freehold less than Inheritance are, 1. The Right of taking reasonable Estovers. 2. That, upon the Death of the Tenant who has sown the Land, his Executors shall have the Emblements. 3. The Right of transferring the Interest, unless particularly restrained.

Tenancy in Tail after Possibility of Issue extinct has this farther *Incident*, that the Tenant is unimpeachable for Waste.

II.

ESTATES LESS THAN FREEHOLD are, 1. *For Years.* 2. *At Will.* 3. *At Sufferance.*

CHAP. III.

Of the Distinction between legal and equitable Estates.

HEREIN are to be considered, 1. USES prior to the Stat. 27 H. 8. c. 10. 2. THE EFFECT of that Statute, and what Uses are executed by it, and what not. 3. TRUSTS.

1. *The Incidents to USES prior to 27 H. 8. c. 10. were,* 1. That they were alienable. 2. Descendible.

scendible. 3. Devisable. 4. Not extendible. 5. Not subject to Forfeiture or any feodal Burthens. 6. Not subject to Dower or Curtesy.

The Incidents to TRUSTS are, 1. That they are alienable. 2. Descendible. 3. Devisable. 4. Liable to Execution on Judgment, &c. 5. Sometimes subject to Forfeiture, and when. 6. Liable to Tenancy by the Curtesy, but not to Dower.

SECT. III.

Of the Means by which Property is acquired or lost.

OF these MEANS some are appropriated to *Chattels*, others to *Hereditaments*, and others are common to both.

These MEANS are, 1. PREROGATIVE. 2. OCCUPANCY. 3. VOLUNTARY ALIENATION. 4. MARRIAGE. 5. PERSONAL REPRESENTATION. 6. FORFEITURE. 7. BANKRUPTCY. 8. DESCENT. 9. SUCCESSION. 10. ESCHEAT. 11. PRESCRIPTION and CUSTOM.

CHAP. I.

Of Title by PREROGATIVE.

IN *Lands* gained from the Sea. IN *Mines*. IN *Treasure Trove*, &c.

CHAP.

CHAP. II.

Of Title by OCCUPANCY.

1. In Hereditaments. 2. In Chattels.

CHAP. III.

Of Title by VOLUNTARY ALIENATION.

Herein are to be considered,

I. THE METHOD *by which the Alienation is made.*

II. THE INTEREST *that may be so alienated or transferred.*

I.

THE METHODS *by which the Alienation is to be made are,*

1. Such as operate immediately on the Possession. 2. Such as operate immediately on the Right of Property.

1. Alienations which operate immediately on the Possession are, 1. Actual Delivery. 2. Symbolical Delivery; such as Livery of Seisin, Induction to a Living, Investiture of an Office.

2. Alienations which operate immediately on the Right are, DECLARATIONS OF THE OWNER. They are either such as have Effect during his Life; such as have Effect by his Death.

Of

Of Declarations which have Effect during the Owner's Life.

These are either,

I. *Without Writing.*

II. *In Writing, but not sealed and delivered.*

III. *In Writing, which is executed with the Solemnity of Sealing and Delivery, which are DEEDS; or under a Sanction of a higher Nature, which are RECORDS.*

I. Alienations not in WRITING are by Agreement, which is either express or implied.

Herein is to be examined, 1. The Consideration of the Agreement. 2. Its Nature, whether executed or executory. 3. How far unwritten Agreements are prohibited by Law; and herein of the Statute of Frauds.

II. Alienations *in Writing*, but not *under Seal*.

Herein are to be considered, 1. Bills of Exchange. 2. Letters of Credit. 3. Policies of Insurance, and all other Instruments, whether commercial or not, by which Property may be transferred, and which are not executed with the Solemnity of a Deed.

III. *Of Alienation in Writing by DEED and by RECORD; and first, of Alienation by DEED.*

Of the general Nature of a Deed, and its component Parts.

Of DEEDS, some serve, 1. To *convey Property*. 2. Some to *charge or discharge* either the Property or the Person, or both the Property and Person.

1.

DEEDS which serve to convey Property are either, 1. By Common Law. 2. By Statute.

1. CONVEYANCES by Common Law are, 1. FEOFMENTS. 2. GIFTS. 3. GRANTS. 4. EXCHANGES. 5. PARTITIONS. 6. CONFIRMATIONS. 7. SURRENDERS. 8. LEASES. 9. RELEASES. 10. ASSIGNMENTS. 11. REVOCATIONS.

2. CONVEYANCES by Statute depend on the Doctrine of Uses and Trusts: They are, 1. A COVENANT TO STAND SEISED TO USES; and herein, of what shall be considered as such, and the Limitations and Modifications of landed Property admitted to be created thereby. 2. BARGAIN AND SALE. 3. A LEASE AND RELEASE.

2.

DEEDS which serve to charge or discharge the Property or Person or both are, 1. OBLIGATIONS. 2. RECOGNIZANCES. 3. DEFEASANCES.

Of Alienation by Matter of Record.

Alienations by Matter of RECORD are, 1. PRIVATE STATUTES. 2. KING'S GRANTS. 3. FINES. 4. COMMON RECOVERIES.

The Parts of a Fine, 1. *The Writ*. 2. *The Licence to agree*. 3. *The Concord*. 4. *The Note*. 5. *The Foot*. 6. *The Proclamations*.

The

The Kinds of Fines are four: 1. *Sur Cognizance de Droit, come ceo que il ad de son Done.* 2. *Sur Cognizance de Droit tantum.* 3. *Sur Concessit.* 4. *Sur Done, Grant, et Render.*

Of the Force and Effect of a Fine.

Of Common Recoveries; their Nature, Kinds, and Effect.

Of Alienation by Declarations which are to have Effect only by THE DEATH OF THE PARTY.

ALIENATION BY WILL relates either, 1. to real, or 2. to personal Property.

1.

Of the Forms necessary to alienate real Property by Devise; and what is devisable by Common Law, and what by Statute.

Of Estates created in a WILL by Implication.

2.

WILLS respecting personal Property are, 1. Nuncupative; 2. Written.

Of the several Kinds of Legacies; the Interest of the Legatee therein, when Legacies are vested, when lapsed, and when they shall abate proportionably.

Of the INTERPRETATION of Contracts and Agreements, executed and executory, commercial or otherwise; and how they may be annulled, waived, or altered.

Of the INTERPRETATION of Deeds: 1. Deeds which have their Effect by Common Law; 2. By Statute; and how they may be avoided.

Of the INTERPRETATION of Wills, and their Revocation, either express or implied.

II.

OF THE INTERESTS *that may be transferred by Voluntary Alienation.*

The INTEREST which may be transferred by VOLUNTARY ALIENATION depends, 1. Upon the State of the Thing over which the Interest is to be transferred. 2. The Terms upon which it is to be transferred. 3. The Degree of Right or Interest which is transferred.

I.

The Thing over which the Interest is to be transferred may be either, 1. In Possession. 2. In Action; and herein, how far and by what Instruments a Chose in Action is assignable.

2.

With respect to the Terms upon which the Interest is transferred, they may be either, absolute, or upon Condition.

Conditions

Conditions with regard to the Mode of their Creation are, 1. Expressed ; 2. Implied. With regard to the Time of their Operation, they are, 1. Precedent; 2. Subsequent.

Of the Difference between a Condition and a Limitation; and the Modes by which they may be created and destroyed.

Under the Head of Conditions expressed may be classed, 1. ESTATES held in GAGE or PLEDGE. 2. ESTATES by STATUTE MERCHANT, or STATUTE STAPLE. 3. ESTATES held by ELEGIT; and herein of their several Properties.

3.

The Interest or Right transferred by Alienation may be, 1. Of the Propriety and Use of the Thing. 2. Of the Right of Use independent of the Propriety. 3. Of some Power over the Thing distinct from the Propriety and the Use.

Powers are either, 1. Simply collateral, without any Interest in the Estate under the Deed creating the Power. 2. Such as are not simply collateral, but coupled with an Interest.

Powers coupled with an Interest are either, 1. APPENDANT; 2. IN GROSS.

1. POWERS APPENDANT are annexed to the Estate, and must be executed out of and concurrent therewith.

2. POWERS IN GROSS do not fall within the Estate of the Person executing them.

The most usual Powers are, 1. Of appointing new Uses. 2. Of Leasing. 3. Selling. 4. Exchanging. 5. Appointing new Trustees.

How Powers may be destroyed.

CHAP. IV.

Of Title by Marriage.

TITLE BY MARRIAGE is either, 1. To Hereditaments. 2. To Chattels real. 3. To Chattels personal.

TITLE TO HEREDITAMENTS is either, 1. By Common Law. 2. By Special Custom.

Title by Common Law is, 1. DOWER; 2. TENANCY BY THE CURTESY OF ENGLAND.

Title by special Custom is either, 1. Of Things not dowable by Common Law, such is the Widow's Freebench in Copyholds, Dower of Tin Mines, &c. 2. Dower different in Extent from that allowed by the Common Law, as of a Moiety or a Fourth of the Husband's Lands.

C H A P. V.

Of Title by Personal Representation.

Herein, 1. Of the Administrator's Right at Common Law. 2. Of the Statute of Distributions. 3. Of Distribution by special Custom.

C H A P. VI.

Of Title by Forfeiture.

TITLE BY FORFEITURE, 1. To Hereditaments.
2. To Chattels.

I.

Forfeiture of Hereditaments are, 1. By general Law. 2. By special Custom.

1. Forfeitures by general Law are occasioned,
1. By Crimes. 2. By Alienation contrary to Law.
3. By Lapse. 4. By Simony. 5. By Nonperformance of Conditions. 6. By Waste.

2. Forfeiture by special Custom relates to the particular Customs of Copyholds.

2.

Forfeitures of Chattels are by Crimes and Misdemeanors.

CHAP. VII.

Of Title by Bankruptcy.

When the Title shall commence.

How acquired, 1. In Hereditaments. 2. In Things personal. *Vide post*, under *Assignee* and *Bankrupt*.

CHAP. VIII.

Of Title by Descent.

TITLE BY DESCENT is where a Right is acquired to Hereditaments on the Death of the Person seised, in consequence of a Participation of inheritable Blood.

Inheritable Blood, or Consanguinity, is either lineal or collateral.

The Course of Descent is regulated, 1. By COMMON LAW. 2. BY SPECIAL CUSTOM.

1. The Rules of Descent by Common Law relate either to Estates in Fee in general, or are peculiar to Estates in Tail.

2. The

2. The Rules of Descent by Custom are, 1. GAVELKIND, 2. BOROUGH-ENGLISH. 3. Of PARTICULAR MANORS.

Of the Distinction between Descent and Purchase; and herein, 1. When the Heir shall be said to be in by one, and when by the other; and of the Effect thereof. 2. What Words are to be considered as Words of Limitation, and what as Words of Purchase: 1. In a Deed; 2. In a Will.

CHAP. IX.

FOR TITLE BY SUCCESSION, 1. To Hereditaments; 2. To Chattels: *Vide tit. Corporate Relations.*

CHAP. X.

Title by Escheat.

TITLE BY ESCHEAT is where, upon Deficiency of the Tenant's inheritable Blood, the Estate falls to the Lord of the Fee.

INHERITABLE BLOOD is wanting, 1. Where the Tenant has no Heir. 2. To Monsters. 3. Bastards. 4. To the maternal Relations in paternal Inheritances, and *vice versa*. 5. To Kin-

dred of the Half Blood. 6. To Aliens and their Issue. 7. Persons attainted of Treason or Felony.

CHAP. XI.

Title by Prescription and Custom.

Of the Distinction between PRESCRIPTION and CUSTOM.

TITLE BY PRESCRIPTION AND CUSTOM is,
I. TO HEREDITAMENTS. II. TO CHATTELS.

I. TITLE TO HEREDITAMENTS is,

1. To Things in Gross or Substantive; and thus a Right to an incorporeal Hereditament may be gained. 2. To Things as incident and appurtenant to an Estate in Fee. 3. To Copyholds.

TITLE TO COPYHOLDS is, 1. By hereditary Descent; and herein, of the Use and Effect of the Heir's Admission. 2. By Surrender.

In transferring Title by Surrender are to be considered, 1. *The Nature of the Surrender.* 2. *The Effect of it.*

1. *With respect to the Nature of the Surrender* are to be considered, 1. Where it may be made; which is either, (1) In Court; (2) Out of Court. 2. To whom it may be made; which is, (1) Into the Hands of the Lord; (2) Into those of the Steward.

Steward. (3) Into those of customary Tenants, when warranted by Custom.

2. *In the Effect of the Surrender* are to be considered, 1. The Presentment by the Homage of such Surrender. 2. The Admittance of the Surrenderee; and herein, who is Lord and who Steward to make a Grant or Admittance. 3. Of the Uses expressed in the Surrender, and the Interest which the Surrenderee has prior to his Admittance.

II. TITLE TO CHATTELS BY CUSTOM is,

1. To Heriots. 2. To Mortuaries. 3. To Heir-Looms. 4. The Right of Foreign Attachment by the Custom of London.

SECT. IV.

Of Estates with respect to the Time at which they are to be enjoyed.

ESTATES with respect to the Time at which they are to be enjoyed are, IN POSSESSION, OR IN EXPECTANCY.

ESTATES IN POSSESSION are where no other interposes between the Right to, and the Possession of, the Thing.

ESTATES IN EXPECTANCY are to be considered,
I. With respect to the Certainty of the Time
of



of Enjoyment. II. With respect to the Quantity of Interest which may be created or limited in Expectancy. III. With respect to the Mode by which it may be so created or limited.

Estates with respect to the Certainty of the Time of Enjoyment are either, 1. VESTED; or 2. CONTINGENT.

1. An Estate VESTED in Interest is, where the future Interest is not referred to or made to depend on a Period or Event that is uncertain.

2. CONTINGENT is where it is referred to, or made to depend upon, such an Event.

II. With respect to the QUANTITY of INTEREST that may be created or limited in Expectancy, it is either, 1. Carved out of a Fee-simple; and herein, of future Terms for Years: or 2. An entire one; and herein, of the Doctrine of Perpetuities, &c.

III. ESTATES IN EXPECTANCY WITH RESPECT TO THE MODE OF THEIR CREATION are, 1. REVERSIONS. 2. REMAINDERS. 3. CONDITIONAL LIMITATIONS. 4. FUTURE USES. 5. EXECUTORY DEVISES; and herein, of the several Properties and Characteristics of each,

SECT. V.

Of the Number and Connection of those who own or are to enjoy the Estate.

ESTATES with respect to the Number of the Owners are said to be held, 1. In SEVERALTY, where the Right is in a single Tenant. 2. JOINTLY, where it is in more than one.

Estates held by more Tenants than one are principally distinguished by the Manner in which the Tenancy has been created, according to which the Rights and Relations of the Tenant are severally affected; they are,

1. JOINTENANCY. 2. COPARCENARY. 3. TENANCY IN COMMON; and herein, of the Incidents to each.

SECT. VI.

Of Persons labouring under some Incapacity to take or enjoy Property.

THESE are, I. Such as arise from the Incapacity of the Person to take Property. II. From his Incapacity to manage it.

I. Persons labouring under an Inability to take Property are, 1. ALIENS. 2. PERSONS
ATTAINED

ATTAINED OF TREASON OR FELONY. 3. PERSONS OUTLAWED in personal Actions.

I. OF ALIENS: 1. Who are. 2. What Property they may take. 3. How the Impediment removed: (1) By Denization; (2) By Naturalization.

II. Persons who labour under an Incapacity to manage Property do not so much lose the Right of Dominion as they transfer it partially to some other.

These Incapacities are, 1. INFANCY. 2. COVERTURE. 3. IDIOCY. 4. LUNACY.

P A R T III.

Of the several Relations in which Individuals stand to each other, and the Rights incident thereto.

PRIVATE RELATIONS are either, 1. NATURAL. 2. CONVENTIONAL. 3. JUDICIAL. 4. CORPORATE, or Bodies Politic.

SECT. I.

Of Natural Relations.

NATURAL Relations are, 1. Husband and Wife. 2. Parent and Child.

CHAP.

CHAP. I.

Of the Relation of Husband and Wife.

1. What is necessary to constitute a Marriage;
and 2. How it may be dissolved.

Over what Things the Husband acquires a Right by Intermarriage, and *vice versa*, 1. In Chattels personal. 2. Chattels real. 3. Hereditaments; and of this both at Law and in Equity.

What Acts of the Husband and Wife bind each other; and of the Interest the Husband has in the Person of his Wife.

CHAP. II.

Of the Relation of Parent and Child.

CHILDREN are, 1. LEGITIMATE. 2. ILLEGITIMATE.

The Rights which a Father has over his Child are, 1. The Custody of his Person. 2. Right of Correction. 3. Consent to his Marriage.

Of the Mother's Interest in her Child where the Father is dead, or the Offspring is illegitimate.

Of

Of the Laws relative to the Maintenance of
ILLEGITIMATE CHILDREN.

Of the Privileges and Disabilities of Infants
with respect to Crimes, Contracts, Estates in
Goods, and in Land.

Of the Period of Full Age or Emancipation.

SECT. II.

Of Conventional Relations.

CONVENTIONAL Relations are such as subsist
in consequence of some Agreement of the
Parties: They are, 1. Master and Servant.
2. Partners.

CHAP. I.

Of the Relation of Master and Servant.

Servants are either, 1. Menial, or 2. Ministerial.

1. Menial Servants are, 1. Hired. 2. Apprentices bound by Indenture. 3. Labourers.

Of the reciprocal Rights of Master and Servant, and how far the former is answerable for the Acts and Contracts of the latter.

2. Ministerial

2. Ministerial Servants are, 1. Bailiffs. 2. Factors. 3. Carriers; and herein, of the several Rights and Duties of each; how far their Acts shall bind their Employer, and how far they shall be answerable to him, either by virtue of an express or implied Agreement, or upon the Custom of the Realm.

CHAP. II.

Of the Relation of Partners.

PARTNERSHIP is a voluntary Agreement between two or more Persons to contribute their Property and Labour for the carrying on an Undertaking, on Condition of sharing the Profit or dividing the Loss.

In treating of Partnership is to be considered,
I. *Its Effect.* II. *How dissolved.*

I. *The Effect* of a Partnership is to be considered, 1. With respect to other Persons. 2. To the Parties themselves.

1. As to its Effect with respect to other Persons there is to be considered, 1. How far the Act of one shall bind all. 2. In what Cases Credit given to one shall be held to be given to all 3. How

far their respective Properties shall be liable to answer these Acts or Credits.

2. The Effect of Partnership on the Parties themselves; and herein, of the Manner in which their Accounts are to be made up as against each other.

II. A Partnership may be *dissolved*, 1. By Efflux of Time. 2. Mutual Agreement. 3. Bankruptcy. 4. Death.

SECT. III.

Of Judicial Relations.

JUDICIAL RELATIONS are such as are either instituted or confirmed by the Interference of a Court of Justice.

They are, 1. GUARDIAN AND WARD. 2. COMMITTEES, AND LUNATICS or IDIOTS. 3. ADMINISTRATOR and next of Kin, &c. EXECUTOR, &c. AND LEGATEE, &c. 4. ASSIGNEES AND BANKRUPT. 5. TRUSTEE AND CESTUI QUE TRUST, &c.

CHAP. I.

Of Guardian and Ward.

Who shall be Guardian, and how appointed.

His Power, 1. Over the Person. 2. Over the Property of his Ward.

CHAP. II.

Of Committee, and Lunatic or Idiot.

1. Lunatics and Idiots. 2. Of their Committees.

1. Lunatics and Idiots; and herein, 1. Who, and how declared so. 2. As to their Acts: what are void and what voidable.

2. Committees are either of the Person, or of the Estate, and herein, 1. Of their Creation. 2. Of their Powers. 3. Of their Removal.

CHAP. III.

Of Administrator and next of Kin, &c. and Executor, and Legatee, &c.

AN EXECUTOR is the Person to whom a Man commits the Execution of his Will, whether jointly or solely.

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ADMINI-

ADMINISTRATORS are, 1. General, in pursuance of 31 Edw. 3. c. 11. and 21 Hen. 8. c. 5. 2. *Cum Testamento annexo*. 3. *Durante minore Etate* of an Infant Executor, or Administrator.

The Offices of Executors and Administrators are, 1. To bury the Deceased. 2. To prove the Will, or take out Administration. 3. To make an Inventory. 4. To collect the Goods, &c. 5. To pay Debts. 6. To pay Legacies. 7. To distribute the undisposed Surplus; and herein, of the Cases where the Executor shall be entitled to it himself.

CHAP. IV.

Assignee and Bankrupt.

I. Of the Bankrupt. II. Of the Assignees. III. The Effect of the Commission on the Bankrupt's Property. IV. On his Debts.

I. Treating of the Bankrupt are to be considered, 1. Who may become Bankrupt. 2. How he may become so. 3. How he is to be made Bankrupt.

II. Of the Assignees; and herein, how chosen, and how removed.

III. Of the Effect of the Commission on the Bankrupt's Property; and herein, 1. What shall be considered as the Bankrupt's Property. 2. The

Assignees Power over it. 3. The Bankrupt's Power over it.

1. In treating of the Bankrupt's Property are to be considered, 1. When Property shall be said to vest in him; and herein, of Arrestments *in Transitu*. 2. When it shall be said to be divested out of him by the Assignment, either with respect to the Crown, or with respect to a Subject.

2. The Assignees Power over the Effects is, 1. His Real Estate. 2. Copyhold. 3. Advowsons and Offices. 4. Reversions. 5. Conditions. 6. Possibilities. 7. Joint Property. 8. Property of which he is the reputed Owner.

3. The Bankrupt's Power over his Effects relates to the Time between the Act of Bankruptcy and that of issuing the Commission; and herein, 1. Of Payments on Delivery of Goods made by him. 2. Of Payments made to him.

IV. The Effect of the Commission on the Bankrupt's Debts; and herein, of the Effect of the Certificate.

CHAP. V.

Of Trustee and Cestuique Trust.

How a Trustee is appointed and removed. Of his Power and Duty; and herein, 1. How this Act

may effect the Trust. 2. How far he is answerable for such Acts as do effect it.

1. He may effect the Trust by, 1. Alienation.
2. Incumbrance. 3. Forfeiture.

2. In examining how far he is answerable, it is to be considered, 1. When he is chargeable for Negligence. 2. When is affected by the Acts of a Co-Trustee.

SECT. IV.

Of Corporate Relations, or Bodies politic.

CORPORATIONS are to be considered, I. With respect to their Creation. II. Their several Kinds. III. Their general Powers. IV. The particular Constitution of Aggregate Corporations. V. The Control over them, or Right of Visitation. VI. Their Dissolution.

I. They subsist, 1. By Common Law. 2. Statute. 3. Charter. 4. Prescription.

II. They are distinguished into Kinds. 1. *From their Numbers.* 2. *From their Object.*

1. *From their Number* they are either, 1. *Sole*, consisting of one Person only. 2. *Aggregate*, consisting of many.

2. *From*

2. From their Object they are denominated also, 1. ECCLESIASTICAL, erected for spiritual Purposes. 2. ELEEMOSYNARY, created for charitable ones. 3. LAY, which are created for temporal ones.

ECCLESIASTICAL CORPORATIONS *sole* are, 1. Archbishops. 2. Bishops. 3. Deans. 4. Archdeacons. 5. Rural Deans. 6. Prebends. 7. Parsons and Vicars.

ECCLESIASTICAL CORPORATIONS *aggregate* are, Dean and Chapter.

III. The *general Powers* incident to all Corporations are, 1. To maintain perpetual Succession. 2. To act in their corporate Capacity like an Individual. 3. To hold Lands subject to the Statute of Mortmain. 4. To have a Common Seal. 5. To make Bye-Laws, which last Power in Ecclesiastical or Eleemosynary Corporations may be executed by the King and the Founder.

IV. In the PARTICULAR Constitution of CORPORATIONS AGGREGATE are to be considered, 1. Their Constituent Parts. 2. How they may Act. 3. The Election and Amotion of Members.

V. Visitors are either, 1. The Founder and his Heirs. 2. One or more Persons appointed

by him; and these may be either general or special. 3. The King who exercises the Power either by his *Court of Chancery*, or his *Court of the King's Bench*.

Visitors are also, 1. Spiritual. 2. Temporal.

VI. A Corporation may be dissolved, 1. By Statute. 2. By the Death of so many of its Members, as that the Remainder are disabled from continuing the Succession. 3. By Surrender of its Franchises. 4. By Forfeiture of its Charter.

BOOK II.

Of Civil Injuries, and the Remedies or Modes of Redress applicable thereto.

A CIVIL INJURY is either the INFRINGEMENT OR PRIVATION of some Civil Right belonging to an Individual; considered as such, it may therefore be committed,

I. Against those Rights which concern his PERSON.

II. Against those which concern his PROPERTY.

III. Against those which arise from the Relations in which he stands to other Individuals.

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THE REMEDIES OR MODE OF REDRESS for these Injuries are;

- I. By mere Act of the PARTY.
- II. By mere Operation of LAW.
- III. By both together, or SUIT IN COURTS.

The Subject of this Book will be most clearly treated of, by considering at the same Time the particular Injury and the particular Mode of Redress.

I.

Of Redress by mere Act of the Parties, and the Injuries to which it is applicable.

REDRESS BY MERE ACT OF THE PARTIES is,
1. By the *sole Act of the Party injured*. 2. By the *joint Act of both Parties*.

1. Redress by the *sole Act of the Party injured* is, 1. Self Defence. 2. Recaption of Goods. 3. Entry on Lands and Tenements. 4. Abatement of Nuisances. 5. Distress for *Rent* or for *Damage feasant*. 6. Seizing of Heriots. 7. Retaining of Debts.

2. Redress by the joint Act of both Parties is,
1. Accord. 2. Arbitrament.

II.

Of Redress by mere Operation of Law.

This is called a *Remitter*, and it takes place, where one having a good Title to Lands, &c. comes into

Possession by a bad one, and is thereupon held by the Law, to have Possession under the good Title, and not under the bad one.

III.

Of Redress by Suit in Courts, and the several Injuries to which it is applicable.

Herein are to be considered, I. The several Courts in which this Redress is to be obtained. II. The Wrongs or Injuries of which they respectively take Cognizance, and the specific Modes of Redress which they apply thereto. III. The Form or Method in which these Remedies must be pursued.

SECT. I.

Of the several Courts in which the Redress of Injuries is to be obtained.

COURTS of Justice are, I. Such as exist by Common Law. II. Such as exist by Special Creation, in Derogation of the Jurisdiction of Common Law Courts*.

* These Courts are only mentioned as making Part of the general Subject, to which the Student should turn his Attention. They will not be considered in the Lectures.

CHAP. I.

Of Courts of Justice which exist by the Common Law.

THESE are, I. Courts where the COMMON LAW is observed. II. Those where the RULES AND MAXIMS OF EQUITY are observed. III. Where PARTICULAR LAWS are observed.

I. Courts where the Common Law, strictly so called, is observed, are, 1. *The Pie Poudre.* 2. The Court Baron. 3. The Hundred Court. 4. The County Court. 5. The Court of Common Pleas. 6. The Court of King's Bench. To which may be added, 7. The Court of Assize. 8. The Court of Nisi Prius.

II. Courts in which the Rules and Maxims of Equity are observed, do also in some Cases sit as Courts of Common Law; and they are, 1. The Courts of Exchequer. 2. The Court of Chancery. 3. The Courts of Exchequer Chamber. 4. The House of Peers.

III. Courts in which particular Laws are observed are, 1. Ecclesiastical Courts. 2. Maritime Courts. 3. Military Courts.

1. Ecclesiastical Courts are, 1. The Court of Archdeacon. 2. The Consistorial Court. 3. The Court of Arches. 4. The Court of Peculiars. 5. The Prerogative Court. 6. The Court of Delegates. 7. The Court of Review.

2. Mari-

2. Maritime Courts are, 1. The Court of Admiralty. 2. The Court of Delegates. 3. The Lords of the Privy Council, and others authorized to hear Prize Causes.

3. Military Courts are, 1. That of Chivalry. 2. Courts Martial.

CHAP. II.

Of Courts which exist by special Creation, in Derogation of the Jurisdiction of the Common Law Courts.

These are, 1. *The Forest Courts*, which include Courts of Attachment, of Regard, of Swainmote, and of Justice Seat. 2. The Court of the *Commissioners of Sewers*. 3. The *Marshalsea*, and the *Palace Courts*. 4. The Courts of the *Principality of Wales*. 5. The Courts of the Duchy of Lancaster. 6. The Courts of the Counties Palatine and other Royal Franchises. 7. The *Stannary Courts*. 8. The Courts of London and other Corporations. 9. The Courts of Request and Conscience, and the modern Regulations of certain Courts Baron and County Courts. 10. The Courts of the two Universities.

SECT.

SECT. II.

Of the Wrongs and Injuries of which these Courts respectively take Notice, and the specific Modes of Redress which they apply thereto.

THE Object of all Suits in Courts are, 1. The Preservation of a Right. 2. Specific Restitution of a Right. 3. Compensation for an Injury or Wrong. 4. Prevention of a Wrong.

The Persons between whom Suits are carried on, are either, 1. Subject and Subject, or 2. The Crown and the Subject.

These Suits are to be considered,

I. With respect to Public Courts of Law and Equity.

II. With respect to Public Courts, which observe particular Laws.

III. With respect to Courts of special Creation.

PART I. OF SECT. II.

Of the Wrongs and Injuries of which Courts of Law and Equity take Notice, and the specific Modes of Redress which they apply thereto in Disputes between Subject and Subject.

CHAP.

CHAP. I.

Of the general Modes of Redress.

THESE are, I. BY ACTION OR SUIT AT COMMON LAW. II. BY APPLICATION TO EQUITY.

I. Actions at Common Law are to be considered, 1. With respect to the Nature of the Recompence demanded. 2. With respect to the Nature of the Injury for which that Recompence is fought.

1. With respect to the Nature of the Recompence demanded, they are, 1. REAL. 2. PERSONAL. 3. MIXED.

2. With respect to the Injury, they are said be founded, 1. UPON CONTRACT. 2. UPON TORT.

TORTS are either with or without force.

II. The Form of *the Application to Equity* is, 1. By English Bill. 2. By Information. 3. By Petition.

CHAP. II.

Of INJURIES to the Person, and their Remedies.

INJURIES to the Person are, I. To the Life. II. To the Body, but not attended with the Loss of Life. III. To the Health. IV. To the Liberty. V. To the Reputation.

I. Such

I. Such as are attended with Loss of Life. These are of so flagrant a Nature, that they do not admit any civil Compensation, and cannot therefore be treated in this Place.

II. INJURIES to the Body are, 1. Threats. 2. Assault. 3. Battery. 4. Mayhem.

The *Remedy* is, 1. Preventional, by Security of the Peace. 2. Remedial, by Action of Trespass for a Compensation in Damages, which is either, 1. *Trespass Vi et Armis*, where the Act committed is *immediately* injurious to the Body. 2. Trespass on the Case, where it is consequentially so.

III. INJURIES to the Health are such as arise from unwholesome Smells, infectious Disorders, or unskilful Practice.

The *Remedy* is by Special Action on the Case for Damages.

IV. INJURIES to the Liberty are either, 1. Where the original Imprisonment is unlawful. 2. Where it is lawful, but the Party is entitled to Bail.

1. Where the Imprisonment is unlawful, the *Remedy* is FIRST to remove or avoid the Imprisonment, which is, 1. By Writ of Habeas Corpus. 2. Of Mainprize. 3. De Odio et Atio. 4. De Homine Replegiando. SECOND, to recover Damages, and this is by Action of *Trespass Vi et Armis*, usually called *Trespass and false Imprisonment*.

2. Where

2. Where the Imprisonment was originally lawful, the *Remedy* is, 1. Habeas Corpus to be admitted to Bail. 2. An action of Trespass on the Case to recover Damages, which lies in some Instances where Bail is refused.

V. INJURIES to the Name are, 1. Slander. 2. Libel. 3. Malicious Prosecution.

The *Remedy* is by Action of Trespass on the Case for Damages.

CHAP. III.

INJURIES to Property are, I. To Chattels Personal. II. To Things heritable in their Nature, whether the Right therein be Real or Personal.

I.

Of Injuries to Chattels Personal.

INJURIES to Chattels Personal are, I. Where the Thing is in Possession. II. Where it is not in Possession, but merely a PERSONAL RIGHT.

1. INJURIES to Chattels Personal in Possession are either, 1. By Dispossession of the Thing. 2. By some Damage done to it.

1. INJURIES arising by Dispossession is, 1. Unlawful taking. 2. Unlawful detaining.

The *Remedies* are, 1. Replevin. 2. Detinue; and these Actions seek for the actual Restitution of

of the Thing. 3. Trover. 4. Trespafs *Vi et Armis*; and 5. Trespafs upon the Cafe, and these Actions seek a Compensation in Damages.

2. INJURY from some Damage done to Chattels Personal are, 1. While it is absolutely in the Owner's Possession. 2. While it is constructively so.

The *Remedy* is, 1. Trespafs *Vi et Armis*. 2. Trespafs on the Cafe; and both are for the Recovery of Damages.

II. INJURIES to PERSONAL RIGHTS are, 1. Breaches of exprefs Contract. 2. Breaches of implied ones. 3. Injuries to mere Rights. 4. To Rights grounded upon penal Statutes.

1. The *Remedy* for INJURIES to exprefs Contract follows the Nature of the Contract.

Where it is founded upon a Specialty, it is, 1. Action of Debt, where the Demand is of a Sum certain. 2. Action of Covenant, where it is to recover Damages for Non-performance.

Where it is without Specialty, it is, 1. Debt to recover a Sum certain. 2. Action of Assumpsit for a Compensation in Damages.

The most common Species of Assumpsits upon exprefs Contracts without Specialty are, 1. On Bills of Exchange and Promissory Notes. 2. On Policies

Policies of Insurance. 3. On Wagers. 4. On express Contracts upon an Hiring, Sale, &c.

2. The *Remedy* for Injuries to implied Contracts is, 1. Assumpsit for Damages. 2. Action of Deceit, when the Injury was committed contrary to good Faith. 3. Debt when the Action is brought upon a Judgment.

The most usual Species of Assumpsits upon implied Contracts are, 1. *Quantum meruit* for Work and Labour done. 2. *Quantum valebat* for Goods sold and delivered. 3. Money had and received by one Person to the Use of another. 4. Money laid out and expended by one Person to the Use of another. 5. On an *Infirmul Computasset* or Account stated. 6. Implied Warranties upon Sales. 7. Implied Promises upon general or particular Customs. 8. Implied Promises of performing one's Duty in any Employment with Integrity, Diligence, and Skill. 9. Upon the Judgment of a competent Court of Justice.

With respect to Injuries done to Contracts, the *Remedy* may also lie in Equity for a specific Performance of Agreements and for annulling them.

3. INJURIES to the mere Rights of another are effected by the Commission of any unlawful Act, by Means of which these Rights are deteriorated; such as claiming Title to a Man's Goods without
Colour

Colour of Right; appearing for him in Action without his Consent, &c.

The *Remedy* is by special Action on the Case for Damages.

4. The *Remedy* for Rights founded upon penal Statutes is, 1. Action of Debt. 2. Of Assumpsit. 3. By Information before a Magistrate.

II.

Of Injuries to Things heritable in their Nature, whether the Right be Real or Personal.

INJURIES to Things heritable are, I. Such as do not remove the Proprietor from his Possession. II. Such as do.

I. INJURIES which *do not remove the Proprietor from his Possession* are, 1. TRESPASS. 2. NUSANCE. 3. WASTE. 4. DISTURBANCE. 5. SUBTRACTION.

I. TRESPASS is an unlawful breaking into any Man's Ground, whereby he is damnified; and it may be committed, 1. By the Party himself. 2. By another, in consequence of his Command.

The *Remedy* is either, 1. Without Suit, by Distress, Damagefeasant, until Recompence is made. 2. With Suit, by *Trespass quare Clausum fregit*, for Recompence in Damages.

2. NUSANCES are, 1. *Public*; 2. *Private*.

E

Private

Private Nuisances are, 1. To Things corporeal; such are, stopping up ancient Lights, carrying on noisome Trades, &c. 2. To Things incorporeal; as to Ways, Markets, Ferries, &c.

Remedies for *private* Nuisances are, 1. Without Suit; to abate or remove them. 2. With Suit, which is either, 1. By Action of Trespass on the Case, to recover a Compensation in Damages; 2. By Assise of Nuisance; 3. By Writ of *Quod permittat prosternere*; both which are for Removal of the Nuisance and Recovery of Damages.

3. WASTE is a Spoil and Destruction in Lands, to the Detriment of one who hath an Interest therein distinct from the Tenant in Possession.

It may be committed, 1. Where the Person has a partial Interest in the Soil, such as Right of Estovers, Pawnage, &c.; and then

The *Remedies* are, 1. By Assise, for Restitution of Damages; 2. By Action of Trespass on the Case, for Damages only.

It may be committed, 2. Against one who has the whole Estate in Reversion or Remainder; and then

The *Remedies* are, 1. Preventative; (1) By Writ of Estrepement at Common Law: (2) By Injunction out of Equity. 2. Corrective; by Action of Waste, to recover the Place wasted, and Damages.

4. DISTURBANCE

4. DISTURBANCE is the hindering or disquieting the Owner of an incorporeal Hereditament in his lawful Enjoyment of it.

DISTURBANCES are, 1. Of Presentation. 2. Of Franchises. 3. Of Common. 4. Of Ways. 5. Of Tenure.

Disturbance of Presentation is the Hindrance of the Patron to present his Clerk to a Benefice; and it may be committed, 1. By the Pseudo Patron. 2. By his Clerk. 3. By the Ordinary.

The Remedies are, 1. By *Assise of darrein Presentment*; 2. Writ of *Quare impedit*; which are to compel Institution, and recover Damages. 3. Writs of *Quare incumbravit*, and *Quare non admisit*; to recover subsequent Damages. 4. By Writ of *Right of Advowson*; to compel Institution, or establish the permanent Right.

2.

Disturbance of Franchises.

The Remedy, by special Action upon the Case.

3.

Disturbance of Common is, 1. The putting on Cattle, by one who has no Right of Common. 2. Surcharging or putting on too many, by one who has a Right to put on some. 3. A

permanent Obstruction, by erecting a Warren, planting, enclosing, &c.

The *Remedy*, 1. For unlawful intercommoning, is either, WITHOUT SUIT, by *Distress, Damage feasant*; or, WITH IT, by Action of *Trespass Vi et Armis*, or *Action on the Case*, for Damages; or by Writ of *Quo Jure*, by him who has the Fee in the Land.

The *Remedy*, 2. For furcharging, is also either, WITHOUT SUIT, by *Distress, Damage feasant*; or, WITH IT, by *Action on the Case*, for Damages; Writ of *Admeasurement of Pasture*, to apportion the Common; Writ *de secunda Superoneratione*, for the supernumerary Cattle, and Damages.

The *Remedy*, 3. For permanent Obstructions, is, by *Assise of Novel Disseisin*, or by Writ of *Quod permittat*, for Restitution of the Common and Damages; by *Action of Trespass on the Case*, for Damages only.

4.

Disturbance of Ways, is the Obstruction, 1. Of a Way in Gross, by the Owner of the Land.
2. Of a Way appendant, by a Stranger.

The *Remedy* for both is, by Action on the Case, for Damages.

5.

Disturbance of Tenure is by driving away Tenants.

The

The *Remedy* is by special Action on the Case, for Damages.

5. SUBTRACTION is when one, who owes Services to another, withdraws or neglects to perform them; and it is, 1. Of Rents or other Services due by Tenure. 2. Of those due by Custom.

The *Remedy* for Subtraction of Rent and Services due by Tenure are, 1. Distress, to compel Payment or Performance. 2. Action of Debt, to compel Payment. 3. Writ of *Cessavit*. 4. Writ of *Right sur Disclaimer*, to recover the Land itself.

The *Remedy* for Subtraction of Services due by Custom is, 1. By Writ of *Seſſa ad Molendinum, Furnum, Torrale, &c.* to compel Performance and recover Damages. 2. Action on the Case, for Damages only.

II. INJURIES which do remove the Proprietor from his Possession are called OUSTERS; and are either, I. From FREEHOLDS; II. From CHÂTELS REAL.

I.

OUSTER from FREEHOLDS is, 1. *Abatement*. 2. *Intrusion*. 3. *Disseisin*. 4. *Discontinuance*. 5. *Deforcement*.

1. *Abatement* is the Entry of a Stranger, after the Death of the Ancestor, before the Heir.

2. *Intrusion* is the Entry of a Stranger, after a particular Estate is determined, before him in Remainder or Reversion.

3. *Disseisin* is a wrongful Ouster of him that is seised of the Freehold; and it may be, 1. Of Things corporeal; 2. Of Things incorporeal: but this is at the Election of the Freeholder.

4. *Discontinuance* is where a Tenant in Tail, or the Husband of a Feme Tenant in Fee, makes a larger Estate of the Land than the Law allows them.

5. *Deforcement* is any other unlawful Detainer of the Freehold from him who hath the Property, but never had the Possession.

The *Remedies* for these Species of Ouster differ, I. Where the *Deforceant* has no Right of Possession. II. Where he has an apparent Right to it. III. Where he has the actual Right to it.

I.

Where the *Deforceant* has no Right of Possession.

The *Remedy* may be by the actual Entry of him who has the Right to the Land, unless that Right of Entry be tolled.

The *Right of Entry* is tolled, 1. By Descent to the Heir of the *Disseisor* after five Years Possession, except in particular Cases. 2. By twenty Years peaceable Possession of the *Disseisor* himself.

self. 3. When the Disseisor hath enfeoffed another.

II.

Where the Deforceant hath the *apparent Right of Possession*, and also where the Claimant does not choose to enter.

The *Remedy* is by Action, to recover the Possession of the Freehold; and they are called Possessory Actions.

Possessory Actions are, I. WRITS OF ENTRY. II. WRITS OF ASSISE.

I. WRITS OF ENTRY are either, 1. Upon *Disseisin*. 2. Upon *Intrusion*. 3. Upon *Alienation*.

1. WRITS OF ENTRY upon *Disseisin* are, 1. In the *Quibus*. 2. In the *Per*. 3. In the *Per* and *Cui*. 4. In the *Post*.

2. WRITS OF ENTRY upon *Intrusion* are, 1. Writ of *Intrusion*. 2. *Ad Terminum qui præterit*. 3. *Causa Matrimonii prælocuti*.

3. WRITS OF ENTRY upon *Alienation* are, 1. When the Alienation has been by an Idiot, and then it is called *Dum non fuit Compos Mentis*. 2. By an Infant, and then it is called *Dum fuit infra Ætatem*. 3. When it has been by a particular Tenant, and then it is either after the Tenant's Death, when it is called *Ad Communem Legem*; or during the Life

of Tenant in Dower, when it is called *In Casu pro-viso*, by Stat. Glo. 7.; or during the Life of any other particular Tenant, when it is called *In consimili Casu*, and is given by St. W. 2. c. 24. 4. When it has been by the Husband, of his Wife's Estate, and then it is either, A *cui in Vitâ*, which lies for the Wife after her Baron's Death; Or a *sur cui in Vitâ*, which lies for her Heir: A *cui ante Divortium*, which lies for the Wife after Divorce; Or a *cui ante Divortium*, which lies for her Heir after her Divorce and Death.

II. WRITS OF ASSISE are, 1. *Aunceſtreſrel*, which are brought upon the *Seiſin* of an Ancestor; or 2. Of *Novel Diſſeiſin*, which are brought on that of the Claimant himself; and these Remedies are applicable only to *Ousters* by *Abatement*, and recent *Diſſeiſin*.

1. *Aunceſtreſrel* Writs of Affiſe are, 1. Of *Mort d'Anceſtor*. 2. *Aiel*. 3. *Befaiel*. 4. *Coſinage*. 5. *Nuper obiit*.

III.

When the *Right of Poſſeſſion* is in the De-
forceant.

The *Remedy* is by WRIT OF RIGHT.

The Right of Poſſeſſion is in the De-
forceant, 1. Upon Diſcontinuance by Alienation of Tenant in Tail. 2. By Judgment given in his Favour in a poſſeſſory Action, and that, either upon the Merits, or his Opponent's Default. 3. When there has been an undiſturbed Poſſeſſion for ſixty Years.

A Writ

A *Writ of Right*, or at least a Writ in the Nature of one, may be brought either, 1. For the Recovery of an Estate in Fee-simple. 2. For that of an Estate in Fee-tail. 3. For that of an Estate for Life.

1. WRITS OF RIGHT brought to recover the Fee-simple are, 1. *Right Patent*. 2. *Right quia Dominus remisit Curiam*. 3. *Præcipe in Capite*. 4. *Right Close*. 5. *Right de rationabili Parte*. 6. *Escheat*.

2. A WRIT OF RIGHT brought to recover an Estate-tail is called a *Formedon*, and is either, 1. In *Descender*; 2. In *Remainder*; 3. In *Reverter*.

3. A WRIT OF RIGHT brought for the Freehold is, 1. *Right of Dower*. 2. *Dower unde nil habet*. 3. *Quod ei deforciat*, by West. 2. c. 4. 4. *Juris utrum*, by 14 Edw. 3. c. 17.

II. Of Ouster from Chattels Real, &c.

OUSTER from Chattels Real is, 1. From *Estates by Statute or Elegit*. 2. From an ESTATE FOR YEARS. 3. AN ESTATE AT WILL.

1. The *Remedy* for Ouster from ESTATES BY STATUTE OR ELEGIT is, 1. By *Affise of Novel Disseisin*. 2. By Action of *Ejectionment*, for Restitution and Damages.

2. The *Remedy* for Ouster from an ESTATE FOR YEARS is, 1. By Writ of *Ejectione Firmæ*, or Action of *Ejectionment*. 2. By Writ of *Quare ejecit infra Terminum*. The Term itself and Damages for

for the Ouster may be recovered in either Action; but the usual Method for the Recovery of Damages is by Action of Trespass for the Mesne Profits.

3. It seems that Tenant at Will may make a Lease to redress his Ouster in an Action of Ejectment.

The usual Method of trying the Title to Lands *now* is, 1. By an Action of Ejectment. 2. Action of Trespass *Vi et Armis*.

CHAP. IV.

OF INJURIES *to those Rights which arise from the Relations in which Men stand; and their Remedies.*

These are, I. To Natural Relations.
II. To Conventional Relations.
III. To Judicial Relations.
IV. To Corporate Relations.

I.

Of INJURIES to Natural Relations.

These are, I. *Those which affect the Relation of Husband and Wife.* II. *Those which affect that of Parent and Child.*

Of INJURIES which affect the Relation of Husband and Wife.

These are, I. Such as are committed by one against the other. II. Such as are committed
against

against the Husband upon the Wife's Person by some other individual.

I. INJURIES committed by the Husband against the Wife may be, 1. *To her Person.* 2. *To her separate Property.*

INJURIES *to her Person* are, 1. Of temporal, 2. Of ecclesiastical Cognizance.

1. INJURIES of temporal Cognizance are,
1. Ill Treatment of her Person; for which the *Remedy* is by Surety of the Peace. 2. Forcing her from his House, and refusing a Maintenance; in which Case the Law, as a *Remedy*, implies that she carries a Credit for Necessaries along with her.

2. INJURIES of ecclesiastical Cognizance are,
1. Inability for the Marriage State: *Remedy*, by Suit for Divorce. 2. Subtraction of conjugal Rights: *Remedy*, by Suit for Restitution. 3. Refusal of decent Maintenance: *Remedy*, by Suit for Alimony. 4. Ill Treatment: *Remedy*, by Suit for Divorce.

Of Injuries to the separate Property of the Wife.

A Wife is considered as having separate Property, 1. In Equity. 2. At Common Law, in particular Cases. 3. By special Custom; and herein, of the Custom of London.

II. INJURIES

II. INJURIES committed against the Husband, upon the Wife's Person, by some other individual are, 1. Taking her away: *Remedy*, by Action of Trespas *de Uxore raptâ et abductâ*, to recover Possession of his Wife, and Damages. 2. Criminal Conversation with her: *Remedy*, by Action of Trespas on the Case, for Damages. 3. Beating her: *Remedy*, by Action on the Case *per quod Consortium amittit*, for Damages.

Of INJURIES which affect the Relation of Parent and Child.

The INJURY is Abduction, or taking his Child away. The *Remedy* is, 1. By Action of Trespas *de Filiis raptis et abductis*, to recover Possession and Damages.

2. By Writ of *Habeas Corpus*, for Recovery of Possession only.

II.

Of INJURIES to Conventional Relations.

These are, I. To that of *Master and Servant*.
II. To that of *Partners*.

I. The INJURIES to a Master are, 1. Retaining his Servants; 2. Beating them. The *Remedy* is, by Action on the Case, for Damages.

II. In examining the INJURIES that may be committed to the Relation of Partners and their *Remedies*, it is to be considered, 1. In what

Manner they must proceed against third Persons.
2. How they may proceed against each other;
and of this, 1. At Law; 2. In Equity.

III.

Of INJURIES to Judicial Relations; and their Remedies.

Herein are to be considered, the *Remedies* both at Law and in Equity:

- I. By and against a Guardian.
- II. By and against Committees of Lunatics.
- III. By and against Trustees.
- IV. By and against Assignees.
- V. By and against Executors and Administrators.

IV.

Of INJURIES to Corporate Relations; and their Remedies.

They are to be considered, I. With respect to third Persons. II. With respect to Members of the Body itself.

I. Civil Injuries committed against or received from third Persons, by Bodies Corporate, do not differ from those committed or received by Individuals; and the Remedy is by the same Sort of Actions.

II. INJURIES

II. INJURIES to the Members of the Body are,
 1. Undue Election of others *into* it. 2. Unjust
 Amotion of such as have been properly elected
from it.

The *Remedy* for undue Election is, 1. By Writ
 of *Quo Warranto*. 2. By Information in Nature
 of a *Quo Warranto*; which is either, (1) By the
 Attorney General. (2) By the Master of the
 Crown Office. (3) By 9 Anne, c. 20.

The *Remedy* for unjust Amotion is by Writ of
Mandamus.

PART II. OF SECT. II.

*Of the Wrongs and Injuries of which Courts of Law
 and Equity take Notice, and the specific Modes of
 Redress which they apply thereto in Disputes be-
 tween the Crown and the Subject.*

INJURIES committed by the Crown relate to
 Right of Property only. The *Remedy* is, 1. By
 Petition of *Droit*. 2. By *Monstrans de Droit*.

The *Remedies* for the Crown against Injuries
 committed by the Subject are, 1. Action. 2. In-
 quest of Office. 3. *Scire Facias*. 4. Informa-
 tion on Behalf of the Crown, which is either for
 Intrusion or Debr. 5. By Writ of *Quo Warranto*.
 6. By *Mandamus*.

Of the Prerogative of the Crown in maintain-
 ing and defending Suits.

PART

PART III. OF SECT. II.

Of the Wrongs and Injuries of which Public Courts, which observe particular Laws, take Notice, and the specific Modes of Redress which they apply thereto.

THESE are, I. In Ecclesiastical Courts. II. In Maritime Courts. III. In Military Courts.

I.

INJURIES cognizable in Ecclesiastical Courts are, I. Beneficial. II. Matrimonial. III. Testamentary. IV. Criminal.

I. *Beneficial* Causes are, 1. *Duplex querela*. 2. *Jus Patronatus*. 3. Spoliation. 4. Dilapidations. 5. Nonpayment of Ecclesiastical Dues. 6. Subtraction of Tithes.

II. *Matrimonial* Causes are, 1. Jactitation of Marriage. 2. Contract of Marriage and Espousals, (taken away by 26 Geo. 2). 3. Restitution of conjugal Rights. 4. Divorces. 5. Alimony.

III. *Testamentary* Causes are, 1. Probate of Wills. 2. Granting of Administrations. 3. Subtraction of Legacies.

The Remedy for these Injuries is by Suit.

IV. Criminal Causes are those where the Proceedings are *pro Salute Animæ et Reformatione Morum*. But an Examination into them is not within the Scope of these Lectures.

II. INJURIES

II.

INJURIES cognizable in the Maritime Courts are such as are done wholly upon the Sea, and not within the Body of any County.

The principal ones are, 1. Mariners' Wages. 2. Contracts relative to the furnishing Provisions or executing Repairs of a Ship. 3. The Execution of the Sentence of a foreign Admiralty. 4. Prizes Causes.

The *Remedy* is by Suit for Payment, &c.

III.

Injuries cognizable in the Military Courts relate, 1. To Matters of Honour : *Remedy*, by Suit, for honourable Amends. 2. To Matters of Heraldry and Coats of Armour : *Remedy*, by Suit, to redress the Grievance. But no Cause is cognizable here that may be determined at Common Law.

Courts of Common Law exercise a superintending Power over these Courts; and herein, 1. Of the Writs of *Mandamus* and *Procedendo*. 2. Of the Writ of Prohibition. 3. Of the Writ of Consultation.

SECT. III.

OF THE GENERAL FORM OR METHOD IN WHICH
THE REMEDIES FOR INJURIES ARE TO BE PUR-
SUED.

I. **I**N Courts of Common Law.

II. In Courts of Equity.

III. In Courts Ecclesiastical, Maritime, and
Military.

PART I. OF SECT. III.

*Of the general Form in which the REMEDIES for
INJURIES are to be pursued in Courts of Common
Law; or the Manner of carrying on an Action.*

Herein, I. Of the Proceedings and Practice in a
Personal Action.

II. Of the Proceedings and Practice
peculiar to a Mixed Action.

III. Of the Proceedings and Practice
peculiar to a Real Action *.

* As the Proceeding by Real Action is obsolete, except
in a very few Cases, it will not be treated of, but for the Pur-
poses of Illustration.

I.

OF THE PROCEEDINGS AND PRACTICE IN A PERSONAL ACTION.

Herein are to be considered,

- I. *The Mode of commencing an Action.*
- II. *Of the Process or Means of bringing the Defendant into Court.*
- III. *His Appearance there, and Manner of proceeding previous to the Defendant's Plea.*
- IV. *The Pleadings or Statements of the Cases of the respective Parties.*
- V. *The Issue or Point agreed to be that in Dispute between the Parties.*
- VI. *The Trial of an Issue in Fact.*
- VII. *The Judgment of the Court.*
- VIII. *The Appeal, or Means of rectifying that Judgment.*
- IX. *The Execution, or Process of the Court to enforce the REMEDY given by their Judgment.*

I. *Of the Mode of commencing an Action.*

This differs, 1. Where it is against *Defendants in general*. 2. Where it is against *Attornies and Officers of the Court* in which the Action is brought. 3. Where it is against *Peers and Members of Parliament*. 4. Where it is against *Prisoners*. 5. Where the Action is brought *BY Attornies or Officers of the Court*.

The Methods of Proceeding in these Cases to the fifth Point of the Cause, or *the Issue*, differ in some

some Degree ; and the Difference will be noticed under each Head.

1. The Mode of commencing an Action against Defendants in general in the KING'S BENCH is,
1. By Original Writ; 2. By Bill in Trespass.

In the COMMON PLEAS it is, 1. By Original and *Capias*. 2. By Original and *Quare Clausum fregit*.

2, 3, and 4. The Mode of commencing an Action against *Attornies and Officers of the Court, Peers and Members of Parliament, and Prisoners*, is by Bill.

5. The Mode of commencing an Action by an Attorney, or other Officer of the Court, is by Attachment of Privilege.

II. Of the Process.

This is, 1. Upon an *Original Writ in the KING'S BENCH*; and an *Original Quare Clausum fregit in the COMMON PLEAS*. 2. Upon a *Bill in Trespass in K. B.* 3. Upon an *Original, with a Capias, in C. P.*

1. Upon an *Original Writ, &c.* it is (1) Summons. (2) Attachment. (3) Distress infinite.

2. Upon a *Bill in Trespass in K. B.* it is,
1. A Bill of Middlesex. 2. A Latitat. 3. A *Non omittas Latitat, &c.*

3. Upon an *Original, with a Capias, in C. P.* it is, 1. *Capias*. 2. *Alias Capias*. 3. *Pluries Capias, &c.*

Process is, 1. Notailable; or, 2.ailable.

1. Where the Process is notailable, the Party is merely to be served with it.

2. Where it isailable, he may be arrested, and kept in Custody until he puts in Bail for his Appearance.

III. *Of the Defendant's Appearance, and the Manner of proceeding previous to the Defendant's Plea.*

Herein, 1. Where he is not in Custody.

2. Where he is.

1.

Where he is not in Custody are to be considered, 1. The Mode of entering an Appearance. 2. Of filing Common Bail, and where it may be done by the Plaintiff. 3. Of putting in Special Bail. 4. Of the Time when the Declaration must be filed, or a Copy delivered. 5. Of the Consequences of not doing so.

Incident to this is Outlawry, when Defendant does not appear.

2.

When the Defendant is in Custody; and herein,

1. When he is in Custody of the Marshal of the King's Bench, or the Warden of the Fleet.

2. When he is in the Custody of the Sheriff.

In both these Cases are to be considered, 1. When he is in Custody at the Suit of the Plaintiff.

tiff. 2. When he is in Custody at the Suit of another.

IV. *Of the Pleadings.*

These are, 1. THE DECLARATION. 2. PLEA. 3. REPLICATION. 4. REJOINDER. 5. SURREJOINDER. 6. REBUTTER. 7. SURREBUTTER, &c.

I.

The DECLARATION is a legal Specification of the Plaintiff's Complaint. In it are to be considered, 1. Of intitling it. 2. The Form of stating the Process. 3. Of laying the Venue. 4. Of stating the Charge or Complaint. 5. Of the Pledges. 6. How Mistakes in it may be amended.

2.

The PLEA is the legal Statement of the Defence to the Action. Herein are to be considered, I. The Plea itself. II. The Time for, and Manner of, pleading it.

I. As to the Plea itself, it is to be considered, *First*, with regard to the *Nature* of the Defence; *Second*, with regard to the Form of stating that Defence, or general *Requisites of such Plea*.

First, with regard to the Nature of the Defence, *Pleas* are, 1. DILATORY. 2. IN BAR.

1. DILATORY Pleas are, 1. To the Jurisdiction. 2. To the Person; which is either to that of the Plaintiff, or of the Defendant. 3. To the Court.

Court. 4. To the Writ ; and this is either, (1) To the Form of the Writ ; (2) To the Action of the Writ.

Second, The general Requisites of a Plea in Abatement are, 1. It must be certain to every Intent. 2. It must give the Plaintiff a better Writ. 3. It must have an apt and proper Beginning and Conclusion.

2. Pleas in BAR are, 1. General. 2. Special.

1. Of the General Issue ; and herein, of the several Kinds adapted to different Actions.

2. Of Special Pleas ; these are, 1. In Denial.

2. In Confession and Avoidance. 3. In Estoppel.

Second, The general Requisites of a Special Plea in Bar are, 1. That it be conformable to the Count. 2. Single. 3. Certain. 4. Direct and positive. 5. Capable of Trial. 6. True. 7. That it have a proper Conclusion.

II. As to the Time and Manner of pleading ; and herein are to be considered, 1. As to Pleas in Abatement ; 2. As to Pleas in Bar.

1. As to a Plea in Abatement, it must be signed by Counsel, and filed with an Affidavit attesting its Truth.

2. As to the Time and Manner of pleading in Bar there are to be considered, 1. The Time ; and herein, of Imparlances, and obtaining further Time to plead. 2. Of the Number of Pleas, or
of

of Pleading double, under the Statute. 3. Of the Manner of pleading; and herein, of entering, filing, and delivering them. 4. The Incidents to them; and herein, of Notices of Set-off; of bringing Money into Court, &c. 5. The Manner of waiving, withdrawing, adding to, or amending them. 6. The Consequences of not pleading; and therein, of the Rule to plead, Demand of a Plea, &c.

3.

The REPLICATION, as to its Nature, is subject to the same Rules as the Plea; to which is to be added, that it must be consistent with, and not depart from, the Declaration; and herein, of *Departures, New Assignments, &c.*

As to *the Time and Manner of replying*, there are to be considered, 1. When the Replication is to be delivered. 2. The Consequences of not replying; and herein, of Discontinuances, *Nolle prosequi*, and *Cassetur Billa*.

V. *Of the Issue.*

An Issue is either, 1. Of *Law*; or, 2. Of *Fact*.

An *Issue of Law* admits the Fact, but disputes the legal Consequences attempted to be deduced from it, and is called a DEMURRER.

In DEMURRERS are to be considered, 1. Of Joinder in Demurrer, and making up the De-

Demurrer Book. 2. Of the *Concilium*. 3. Delivering the Demurrer Book. 4. The Consequence of not joining in Demurrer. 5. The Argument. 6. Of waiving and amending.

2.

An *Issue of Fact* admits the legal Consequences which are attempted to be deduced from it, but disputes the Truth of the Fact as alleged.

VI. *Of the Trial of an Issue in Fact.*

An Issue in Fact is triable, 1. By Inspection, 2. By Certificate. 3. By Witnesses. 4. By Wager of Battel. 5. By Wager of Law. 6. By Record. 7. By Jury.

In the Trial of an Issue by Jury are to be considered, 1. How to make up and deliver the Issue. 2. Of giving Notice of Trial. 3. Of suing out Process for a Jury and Witnesses; and herein, of Special Juries and a View. 4. Of making up and passing the *Nisi Prius* Record, and carrying it down; and herein, of carrying it down by Proviso. 5. Of entering it. 6. Of the Trial itself, and its Incidents; and herein, (1) Of challenging the Jury, and of Talesmen. (2) Of the general Principles of Evidence. (3) Of Demurrers to Evidence and Bills of Exception. (4) Of Nonsuits. (5) Of the Verdict, which is either general or special. (6) Of Cases reserved.

VII. *Of*

VII. *Of Judgment, and its Incidents.*

1. Upon Demurrer; and herein, of Writs of Inquiry. 2. After Verdict; and herein, (1) Of Motions for a new Trial. (2) Of the Proceedings where it is granted. (3) Of Motions in Arrest of Judgment; and herein, of awarding a Repleader.

The Incidents to Judgment are, 1. Taxing the Costs. 2. Signing final Judgment. 3. Docketing it.

VIII. *Of Appeals from these Judgments.*

These are, 1. By Writ of Attaint. 2. By *Audita Querela*. 3. By Writ of Error.

Writs of Error from Judgments in the Inferior Courts, and also from those in the Common Pleas, lie, 1. Into the King's Bench. 2. Into the House of Lords.

Writs of Error from the King's Bench are either, 1. Where the Action is begun by Bill; 2. Where it is begun by Original.

1. Where it is begun by Bill, except the King is Party, Error lies, 1. Into the Exchequer-chamber; 2. Into the House of Peers.

2. Where it is begun by Original, Error lies in the House of Peers in the first Instance.

Writs

Writs of Error from Proceedings on the Law Side of the Exchequer are, 1. Into the Exchequer-chamber. 2. Into the House of Peers.

IX. *Of Execution.*

Executions are, 1. BY FIERI OR LEVARI FACIAS against Defendant's Goods. 2. BY ELEGIT against his Goods and a Moiety of his Lands. 3. BY CAPIAS AD SATISFACIENDUM against his Person.

In treating of these Writs are to be considered, 1. When they may be sued out; and herein, of *Scire Facias*. 2. Against whom. 3. Their Form. 4. Proceedings by the Sheriff in executing them, and Remedies against him. 5. Motion to set them aside.

In treating of the Proceedings by the Sheriff, and the Remedies against him, there are to be considered, 1. How he is to execute, (1) Writs against the Person; (2) Writs against the Goods. 2. When two Writs come, to which he must give the Preference; and herein, of indemnifying him. 3. His Return to the Writ. 4. The Remedy for a false Return.

II.

OF THE PROCEEDINGS AND PRACTICE PECULIAR TO THE MIXED ACTION OF EJECTMENT.

In treating of this are to be considered, 1. By whom it may be brought. 2. The Form of the Proceedings so far as they differ from those used in a Personal Action.

1. With

1. With respect to those by whom it may be brought, they are; all who have a Right of Entry. and herein, 1. Of the Right of Mortgagees. 2. Of Trustees. 3. Of Devisees under a Will. 4. Of Assignees of a Bankrupt. 5. Of Grantee of a Rent-charge. 6. Of Infants. 7. Of Executors and Administrators. 8. Of Corporations Aggregate.

2. The Form of Proceedings is to be considered, 1. Where the Premises are tenanted. 2. Where they are untenanted; and herein, of Proceedings under 4 Geo. 2. c. 28.

Of perpetual Injunctions to quiet the Possession.

PART II. OF SECT. III.

OF THE GENERAL FORM IN WHICH THE REMEDIES FOR INJURIES ARE TO BE PURSUED IN COURTS OF EQUITY.

Herein are to be considered,

- I. *The Mode of commencing a Suit in Equity.*
- II. *The Process, and Defendant's Appearance.*
- III. *The Defence.* IV. *The subsequent Statement of their Cases by the respective Parties.*
- V. *The Proof.* VI. *The Hearing.*
- VII. *The Decree.*
- VIII. *The Means of executing the Decree.*
- IX. *The Means of rectifying that Decree.*

I. Of

I. Of the Mode of commencing a Suit in Equity.

This is either, I. By Bill, on the Part of a Subject. II. By Information, on the Part of the Crown, and those who partake of its Prerogative.

I. In treating of a *Bill* are to be considered,
1. Its several Kinds. 2. Its several Parts.

I.

The several Kinds of Original Bills are, 1. A Bill of Relief. 2. A Bill of Interpleader. 3. A *Certiorari* Bill. 4. A Bill to perpetuate Testimony of Witnesses. 5. A Bill for Discovery.

Besides Original Bills, there are also, 1. Bills not Original. 2. Bills in the Nature of an Original.

1. Bills not Original are, 1. A Supplemental Bill. 2. A Bill of Revivor.

2. Bills in Nature of an Original are, 1. A Cross Bill. 2. A Bill of Review. 3. A Bill in Nature of a Bill of Review. 4. A Bill to impeach a Decree on the Ground of Fraud. 5. A Bill to suspend or avoid the Execution of a Decree. 6. A Bill to carry a Decree into Execution. 7. A Bill in Nature of a Bill of Revivor. 8. A Bill in Nature of a Supplemental Bill.

2.

The several Parts of a Bill are, 1. The Direction. 2. The Introduction. 3. The Premises.
4. The

4. The confederating Part. 5. The charging Part. 6. The Clause of Jurisdiction. 7. The interrogatory Part. 8. The Prayer of Relief. 9. The Prayer of Process.

II. The Information is instituted, 1. By the King's Attorney or Solicitor General. 2. By the Attorney General of the Queen-consort.

II. *Of the Process, and Defendant's Appearance.*

Process is, 1. In the Case of common Persons. 2. In the Case of privileged Persons.

I.

Process in the Case of common Persons is, 1. Subpœna. 2. Attachment. 3. Attachment with Proclamations. 4. Commission of Rebellion. 5. Serjeant at Arms. 6. Sequestration.

2.

In the Case of privileged Persons, it is, 1. Letter missive. 2. Subpœna. 3. Sequestration.

III. *Of the Defence.* IV. *Of the subsequent Statement of their Cases by the respective Parties.*

III. The DEFENCE is, 1. By Disclaimer. 2. By Demurrer. 3. By Plea. 4. By Answer, which is in general to be verified on Oath.

IV. The subsequent Proceedings are, 1. Exceptions to Defendant's Answer. 2. Amendments. 3. Replication. 4. Rejoinder.

V. *Of*

V. *Of the Proof.* VI. *Of the Hearing.*

The *Proof* is by Examination of Witnesses upon Interrogatories; and this is, 1. Before an Examiner. 2. Before Commissioners.

Herein are to be considered, 1. The Subpœna to compel the Witnesses' Attendance. 2. The Publications of the Proofs. 3. The Exception to the Evidence by Articles.

V. Relative to the Hearing is to be considered, 1. By whom the Cause may be heard. 2. The Subpœna to hear Judgment. 3. The Subpœna to shew Cause against the provisional Judgment pronounced, where the Defendant has not appeared at the Hearing.

VII. *Of the Decree.*

Decrees are, 1. Interlocutory; and herein, of Feigned Issues, References to a Master, Rehearing, &c. 2. Final; and herein, of signing and enrolling it.

VIII. *Of the Means of executing the Decree.*

The Decree may be either, 1. *In Personam*; 2. *In Rem*.

1. When it is *in Personam*, the Process of Execution is, 1. A Writ of Execution; and, subsequent to it, all the ordinary Processes of Contempt to Sequestration.

2. When it is *in Rem* after issuing a Commission of Rebellion, it is usual to award an *Injunction*.

IX. *Of the Means of rectifying the Decree.*

This is, 1. By Bill of Review. 2. By Appeal to the House of Lords.

PART III. OF SECT. III.

Of the general Form in which the Remedies for INJURIES are to be pursued in Courts Ecclesiastical, Maritime, and Military.

I.

Of the Form of proceeding in the Ecclesiastical Courts.

Ecclesiastical Causes are to be considered,

- I. *With regard to the Nature of the Proceeding.*
- II. *With regard to its constituent Parts.*

I. *With regard to the Nature of the Proceeding.*

They are, 1. Causes of OFFICE, which run in the Name of the Judge. 2. Of INSTANCE, which are at the Solicitation of the Party.

I.

Causes of OFFICE are, 1. *Ex Officio mero.*
2. *Ex Officio promot.*

2.

Causes of INSTANCE are, 1. Plenary. 2. Summary.

II. *The*

II. *The constituent Parts of an Ecclesiastical Cause,* according to the usual Course of Proceedings, are,
 1. CITATION. 2. LIBEL. 3. CONTESTATION OF SUIT. 4. PERSONAL ANSWER OF THE DEFENDANT. 5. ASSIGNMENT OF A TERM PROBATORY. 6. PROOFS. 7. DEFENSIVE ALLEGATION. 8. TERM TO PROPOUND ALL THINGS. 9. TERM TO CONCLUDE. 10. INFORMATIONS. 11. SENTENCE. 12. EXECUTION. 13. APPEAL.

1.

CITATION is a judicial Act by which the Defendant is summoned to appear, in order to enter into the Suit.

It is either, 1. Original. 2. *Decretum Viis et Modis*. 3. *Sub mutua*. 4. Intimation.

Every Citation is returnable at a certain Place and Day. Such Return is made, 1. Personally, by Oath of the Party who has executed it. 2. By Certificate.

2.

The LIBEL is the Charge in Writing brought by the Plaintiff.

The Proceeding by LIBEL is peculiar to Causes of *Instance*. In Causes of *Office* it is by Articles.

3.

CONTESTATION OF SUIT is a general Answer made by the Defendant in which he denies the Matter charged against him in the Libel.

4. PERSONAL

4.

PERSONAL ANSWER OF THE DEFENDANT is, what is urged in particular, by Way of Denial or Extenuation of the Charge, *before* the Plaintiff makes Proof of his Libel by Witnesses.

5.

THE ASSIGNMENT OF A TERM PROBATORY is an Appointment of the Judge of a certain Time, within which the Plaintiff is required to prove so much of the Libel as the Defendant has not confessed in his personal Answers.

6.

PROOFS are had, 1. From Witnesses. 2. From Instruments.

If new Matter arises not yet produced in Evidence, it may be admitted under the Name of an ALLEGATION.

The Plaintiff having proved his Libel demands what is called PUBLICATION OF WITNESSES.

7.

DEFENSIVE ALLEGATION is what is opposed by the Defendant in Writing to the Charge objected by the Libel. To which are consequent, as in the Case of the Plaintiff, 1. The personal Answer of Plaintiff. 2. A Term probatory. 3. Publication of Witnesses.

8.

THE TERM TO PROPOUND ALL THINGS, is the Appointment by the Judge of a Time at which both Parties are to exhibit all the Acts and Instruments which make for their respective Causes.

9.

THE TERM TO CONCLUDE, is an Appointment by the Judge of a Time at which both Parties are understood to renounce all further Exhibits and Allegations.

The *Terms to propound all Things*, and *Terms to conclude*, are peculiar to *plenary* Causes. In *summary* Causes, the Term required is called the *Term to hear Sentence on the first Assignment*.

10.

INFORMATIONS, are Arguments urged before the Judge, by the Advocates on both Sides after the Pleadings and Proofs are concluded, which are followed by,

11.

THE SENTENCE, which is either *Interlocutory* or *Definitive*; and

12.

EXECUTION, which is enforced by EXCOMMUNICATION.

13.

APPEAL is, 1. Judicial, or *apud Acta*, which is made *viva Voce*. 2. Extra judicial before a Notary, which is made *in Scriptis*.

APPEALS

APPEALS may be, 1. From Grievances before Sentence. 2. From the *Sentence*, either *Definitive*, or *Interlocutory* having the Force of a *Definitive*.

In an Appeal from the *Sentence*, Letters Missive are demanded from the Judge *a quo*; which are transmitted to the Judge *ad quem*, to instruct him in the Nature of the Suit.

In an Appeal, whether from a *Grievance* or the *Sentence*, an *Inhibition* is issued from the superior Court to the inferior to stop Proceedings.

If after INHIBITION issued, or APPEAL from the *Sentence*, the Judge *a quo*, or Party obtaining Sentence, shall attempt any Act in prejudice of the Appellant or the Appeal, they may both be proceeded against *in Causâ Attentationis*.

Appeals must regularly be finished in one Year, called *primum Fatale*. But sometimes a second, called *secundum Fatale*, is allowed.

This Time of one or two Years allowed by the Law, is called *Terminus Juris*; where a shorter Time is appointed by the Judge, it is called *Terminus Hominis*.

A Cause may be removed from an inferior to a superior Court, not only by APPEAL, but also, 1. *Ante Litis Ingressum*, by PROVOCATION. 2. *Post Litis Ingressum*, by RECUSATION.

1. PROVOCATION is where one who suspects that an inferior Judge intends to proceed against
8 him,

him, in a Cause of Office or of Instance, puts himself, before he is cited, under the Protection of a superior Court.

2. RECUSATION is, when one, who suspects an inferior Judge of Partiality, refuses *after* he is cited to submit to his Jurisdiction, in which Case the Person refusing must exhibit Articles to be referred to Arbitrators, named on both Sides.

II. and III.

Of the Form of Proceeding in Courts Maritime and Military.

II. The Proceedings in Maritime Courts bear much Resemblance to those of the Civil Law.

Herein are to be considered, 1. The Process. 2. The Caution or the Recognizances in Nature of Bail. 3. The Libel and Plea, and Proceedings thereon. 4. The Execution, which may be against both the Principal and his Surety.

III. In Courts Military, the Proceedings are by Petition in a summary Way, and the Trial by Witnesses or by Combat.

